



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 201109-0298]

RIN 0648-BJ94

Pacific Island Fisheries; Interim Measures for American Samoa Bottomfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim measures.

SUMMARY: This temporary rule implements an interim catch limit (ICL) of 13,000 lb of American Samoa bottomfish for fishing years 2020 and 2021 during the effective period of the rule. NMFS will monitor catches, and if the fishery reaches the ICL within a fishing year, we will close the fishery in Federal waters through the end of the fishing year, or through the end of the effective period of this rule, whichever comes first. These interim management measures are necessary to reduce overfishing of American Samoa bottomfish while minimizing socio-economic impacts to fishing communities. This temporary rule supports the long-term sustainability of American Samoa bottomfish.

DATES: Effective [*insert date of publication in the FEDERAL REGISTER*], through [*insert date 180 days after publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of the Fishery Ecosystem Plan for the American Samoa Archipelago (FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, or www.wpcouncil.org.

NMFS prepared an environmental assessment (EA) that describes the potential impacts on the human environment that could result from this temporary rule. The EA and other supporting documents are available from www.regulations.gov/docket?D=NOAA-NMFS-2020-0099.

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, NMFS PIR Sustainable Fisheries, 808-725-5185.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific Fishery Management Council (Council) manage the bottomfish fishery in the U.S. Exclusive Economic Zone (Federal waters) around American Samoa under the FEP and the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Most of the management measures for the fishery are found at 50 CFR 665.

In 2019, the NMFS Pacific Islands Fisheries Science Center (PIFSC) completed a benchmark stock assessment that indicated that the multi-species bottomfish stock complex in American Samoa is overfished and experiencing overfishing. Consistent with Magnuson-Stevens Act sections 304(e)(6) and 305(c), the Council requested that NMFS

implement an interim measure to reduce overfishing of the stock while the Council develops management measures required by section 304(e)(3). This temporary rule implements an interim catch limit (ICL) of 13,000 lb of American Samoa bottomfish for the fishing year. We originally proposed the rule would be effective only during fishing year 2020. This final rule revises the proposed effective period of this measure so that it will remain in effect for 180 days or until replaced, consistent with Magnuson-Stevens Act section 305(c), to ensure that the measure is continuous with any subsequent extension. Thus, the catch limit of 13,000 lb will apply for fishing year 2020, and for fishing year 2021 until the measure expires or is replaced.

As an in-season accountability measure, if NMFS projects that the fishery will reach the ICL, we would close the fishery in Federal waters through the end of the fishing year in which the ICL is reached, or the end of the effective period of this rule, whichever comes first. To maintain consistency with the timeframe of catch projections from the stock assessment and the bottomfish fishing year (January-December), NMFS will monitor catches of bottomfish management unit species (MUS) made in both territorial and Federal waters during the fishing year and will count the combined catch toward the ICL for that year. Under the interim measure, overfishing will be reduced

relative to the status quo, and socio-economic impacts to the community will be minimized relative to measures that would have ended overfishing immediately.

You may find additional background information on this action in the preamble to the proposed temporary rule published on September 11, 2020 (85 FR 56208).

Comments and Response

On September 11, 2020, NMFS published a proposed rule, an EA, and regulatory impact review for public comment (85 FR 56208). The comment period ended September 28, 2020. NMFS received comments from three individuals, the American Samoa Department of Marine and Wildlife Resources (DMWR) and the Western Pacific Fishery Management Council, and responds below.

Comment 1: The temporary catch limit and accountability measures are reasonable to balance the need to reduce overfishing while minimizing the impact to economic, cultural, and subsistence fishing. One of the regulatory conditions for implementing interim measures is that following the recommendations for ending overfishing immediately would be "expected to result in severe social and/or economic impacts." This condition is met, and is evidenced by the comments made by American Samoan fishermen and council members at public Council meetings, which indicated that even the higher ICL of 13,000 lb would inhibit subsistence fishing. Their comments also indicated

that the potential closure of the Federal offshore banks as a result of reaching the 13,000 lb ICL would further inhibit subsistence fishing and cultural practices due to the lack of access to "important fishing grounds for deep-water snappers that are critical for cultural ceremonies." Overall, the proposed rule would have positive impacts on American Samoa bottomfish stocks, while not completely inhibiting the livelihood of American Samoan fishermen and residents.

Response: NMFS agrees.

Comment 2: The calculation methods used to assess the condition of the bottomfish stocks are not accurate, and new methods are needed to monitor fish catches and collect fishery data, including a self-reporting device developed by the Council.

Response: The methods and data used to assess the condition of the American Samoa bottomfish fishery and to develop the interim measure are the best available scientific and commercial information on the status of the stocks. The 2019 benchmark stock assessment completed by NMFS PIFSC used all available information about the fishery and applied the overfishing status determination criteria established in the FEP to evaluate stock status, and all components of the assessment were evaluated and analyzed for applicability and appropriateness for use. Moreover, consistent with the Magnuson-Stevens Act and regulations at

50 CFR 600.315 for scientific information, the assessment was independently peer reviewed through the Western Pacific Stock Assessment Review (WPSAR) process, which found that the results and conclusions were reliable and useful for management purposes based on information available at the time.

Fishermen's concerns regarding the stock assessment methodologies and reliability of the fisheries data were presented and discussed at the October 2019 meeting of the Council's Scientific and Statistical Committee (SSC) in Honolulu, Hawaii, and October 2019 Council meeting in Pago Pago, American Samoa. The SSC and Council, nonetheless, accepted the stock assessment as providing the best scientific information available for management purposes. Accordingly, in January 2020, PIFSC determined the 2019 assessment is the best scientific information available for the fishery.

NMFS recognizes that the Council is exploring new and other methodologies to improve fisheries data in American Samoa and other U.S. territories. As part of a coordinated approach to improve fisheries information, NMFS, in collaboration with the Council, DMWR, and other resource management agencies have developed a Marine Recreational Implementation Plan for the Pacific Islands Region (MRIP-PIR). This plan identifies priority needs and actions associated with understanding and management of the non-

commercial fishery in the state/territorial and Federal waters in 2018-2022. These include:

1. A programmatic review of the Territory creel surveys;
2. Full funding for the surveys that meets the minimum survey standards for Hawaii, American Samoa, and the Mariana Archipelago, including expansion of spatial and temporal surveys, and additional technical support for data entry and database management;
3. Improved timeliness of non-commercial catch estimates;
4. Development of an algorithm that extracts the non-commercial component of the total creel survey catch estimates; and
5. Development of mobile data entry system to support near-real time reporting.

Comment 3: The DMWR noted that the previous stock assessment before the current one indicated that bottomfish stocks were healthy, and questioned how the fishery can be subject to overfishing and overfished with low numbers of fishery participants. The DMWR does not feel that the assessment accurately captured the nature of the fishery, and requested that NMFS re-examine the assessment methodology, including whether the DMWR data collection systems are appropriate for such methods.

Response: The previous assessment completed by PIFSC in 2016 was replaced by a new benchmark assessment in 2019. Several changes relative to the previous assessment were incorporated into the 2019 benchmark assessment. These include using new species lists, calculating the percentage of catch reported at the family or species-group level and believed to contain bottomfish management unit species, filtering catch per unit effort (CPUE) based on gear, standardizing the CPUE for covariates that may affect the catch rate, removing independently-estimated maximum sustainable yield values from the model fitting process, and including an improved production model parameterization. An independent panel of fisheries scientists reviewed the 2019 assessment and concluded that it is superior to the previous assessment. PIFSC, the Council and its SSC concluded that the 2019 assessment represents the best scientific information available for the American Samoa bottomfish fishery. The DMWR has not identified any superior information that NMFS failed to consider when it determined the stock assessment was the best scientific information available, so based on the best scientific information available NMFS determined that the fishery is subject to overfishing and is overfished, and developed the interim measure to reduce overfishing while the Council develops and NMFS implements long-term management measures to end overfishing and rebuild the

stock. For the next assessment, NMFS anticipates that MRIP-PIR will improve fishery data to allow consideration of alternative methods for assessing the condition of the fishery. See also response to Comment 2.

Comment 4. The DMWR believes that the 13,000 lb ICL is too low for American Samoa fishermen to subsist, and does not support closing Federal waters to bottomfish fishing, especially the productive offshore banks, which the DMWR asserts are important fishing grounds for deepwater snappers that are critical for American Samoan cultural ceremonies and fa'alavelave. Instead, they propose that DMWR develop a territorial bottomfish management plan in coordination with NMFS that includes data workshops to fully understand the fishery and incorporates cultural aspects of the fishery. They also requested flexibility in the national guidelines.

Response: The best scientific information available indicates that the fishery is subject to overfishing and is overfished. This temporary action, which includes a potential closure of Federal waters to prevent the fishery from exceeding the limit, is needed to reduce overfishing while the Council and NMFS develop a plan that ends overfishing and rebuilds the stock. NMFS expects that the level of catch under this temporary action will still allow American Samoan bottomfish fishermen to continue to provide enough fish for subsistence, cultural, and religious

purposes. Overall, the interim action provides a balance between the statutory requirement to reduce overfishing and the needs of the fishery and dependent communities for continued access to bottomfish. NMFS is committed to working with DMWR and the Council to address the condition of the fishery, which may include consideration of a bottomfish management plan for territorial waters. See also response to Comments 1-3.

Comment 5: The DMWR also requested that NMFS examine whether changes in the priority species of management and other aspects of the analysis have changed the status of the fishery.

Response: The 2019 assessment evaluated species that remained as management unit species after the ecosystem reclassification action. The WPSAR panel investigated the impact of changes in the management unit species and found that it did not have significant effects on the assessment results. The panel concluded that changes in the assessment were improvements over the previous assessment, which supported the determination that the assessment is the best scientific information available for management.

Comment 6: The Council expressed general support for the action, but noted concerns about the data used in the 2019 stock assessment, how the WPSAR review addressed data uncertainty, and suggested options for improving data used for future assessments.

Response: The data used for the assessment comes from two programs conducted by the DMWR in collaboration with the NMFS Western Pacific Fisheries Information Network (WPacFIN): creel surveys and the commercial purchase database program. The stock assessment authors considered, but rejected, using other data sources, such as the WPacFIN biosampling program and the Federal permit logbook dataset, due to insufficient years of data or low reporting rates. The SSC expressed concern about the reliability of data from the creel surveys and commercial dealer program, but did not identify a superior data source. Thus, the data relied on for the assessment are considered the best scientific information available. Moreover, the assessment was reviewed by an independent panel of experts under the WPSAR process and the SSC, and was endorsed by these groups and NMFS as the best scientific information available. NMFS looks forward to working with the Council and the DMWR to develop a long-term plan to end overfishing and rebuild the stock. See also responses to Comments 1-4.

Comment 7: Implementation of the interim measure will be challenging, given that the majority of fishing activity is believed to take place in territorial waters, and that existing monitoring was not designed for in-season tracking. The Council is working with the DMWR to develop a Territorial Bottomfish Fishery Management Plan, which would

allow parallel management of the bottomfish management unit species between territorial and Federal waters.

Response: NMFS will work with DMWR to encourage timely processing of data, and will track all catches in Federal and territorial waters toward any applicable limit when data are provided to NMFS. While NMFS cannot implement a closure in territorial waters, we will still monitor and account for catch that comes from territorial waters. NMFS agrees that the efficacy of the measure could be improved if the Territory implemented parallel management. See also response to Comment 8.

Comment 8: There should be an additional proposal to monitor species of fish, especially those that have been over-fished, in territorial waters to gain a better estimate for catch limits, and to assess the costs and benefits regarding economics and biological sustainability.

Response: The creel surveys and commercial receipt program conducted by DMWR in collaboration with NMFS collect fisheries data in both territorial and Federal waters, so current management already includes the suggested measures. The information is used in stock assessments that evaluate the effects of fishing and management on the bottomfish stock as a whole, and are also used to assess potential social, cultural, and economic impacts in the EA.

Comment 9: While a catch limit is appropriate for American Samoa bottomfish for the remainder of 2020, the limit of 13,000 lb may be inappropriate because, although this number may be regulated in Federal waters, most (85%) bottomfish live in territorial waters, which are unregulated by the NMFS.

Response: The bottomfish stock in American Samoa is assessed as a single unit across the archipelago, including territorial and Federal waters. Similarly, the 13,000 lb catch limit covers bottomfish in both areas. NMFS will monitor catch in territorial and Federal waters relative to the 13,000 lb ICL, but does not have jurisdiction to restrict catch in territorial waters. NMFS agrees that the efficacy of the measure could be improved if the Territory implemented parallel management.

Comment 10: The effects of overfishing need to be mitigated, especially for a species that has previously been recorded to experience overfishing.

Response: NMFS agrees that the effects of overfishing need to be mitigated, and developed this rule to accomplish that goal. We note, however, that previous stock assessments did not conclude that the stock is experiencing overfishing; the current overfishing status was first determined by NMFS in 2020.

Changes from the Proposed Rule

The proposed rule would have been effective during fishing year 2020 only. This final rule is effective for 180 days. We are making this change under Section 305(c) of the Magnuson-Stevens Act so that this rule is effective for 180 days, or until replaced, to ensure that the measure is continuous with any subsequent extension.

Classification

NMFS is issuing this temporary rule pursuant to section 304(e)(6) and section 305(c) of the Magnuson-Stevens Act, which provide specific authority for implementing this action to address overfishing in response to a request from the Council. The NMFS Assistant Administrator has determined that this temporary rule is consistent with the FEP, the Magnuson-Stevens Act, and other applicable law.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Administrative Procedure Act

The Assistant Administrator Fisheries, NOAA (AA) finds it is contrary to the public interest to provide for a 30-day delay in effectiveness of this temporary rule. The need to implement the interim rule in a timely manner to reduce overfishing constitutes "good cause" under authority contained in 5 U.S.C. 553(d)(3) to make the rule effective immediately upon publication in the **Federal Register**. The fishery is experiencing overfishing, and management measures are needed to reduce catch to mitigate immediate effects of fishing on the stock and long-term effects on the fishing community while the stock is rebuilding. Specifically, the temporary action needs to be implemented immediately to establish thresholds that would minimize adverse biological effects to the stock and adverse long-term socioeconomic effects to fishermen and communities that utilize bottomfish in American Samoa.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 665

Accountability measure, American Samoa, Bottomfish,
Fisheries, Fishing, Interim catch limit, Pacific Islands.

Dated: November 10, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends
50 CFR part 665 as follows:

PART 665 – FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665
continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Add § 665.102 to read as follows:

§ 665.102 Bottomfish Interim Catch Limit.

(a) The interim catch limit for American Samoa
bottomfish MUS for the fishing year is 13,000 lb.

(b) When the interim catch limit is projected to be
reached, the Regional Administrator shall publish a
document to that effect in the **Federal Register** and shall

use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, through the end of the fishing year in which the interim catch limit is reached or the end of the effective period of this rule, whichever comes first.

(c) On and after the date the fishery is closed as specified in paragraph (b) of this section, fishing for and possession of American Samoa bottomfish MUS is prohibited in Federal waters around American Samoa, except as otherwise authorized by law.

(d) On and after the date the fishery is closed as specified in paragraph (b) of this section, possession, sale, offering for sale, and purchase of any American Samoa bottomfish MUS caught in Federal waters around American Samoa is prohibited.

3. In § 665.103, stay the introductory paragraph, add paragraph (a) and add and reserve paragraph (b) to read as follows:

§ 665.103 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(1) Fish for American Samoa bottomfish MUS or ECS, or seamount groundfish MUS using gear prohibited under § 665.104.

(2) Fish for, possess, sell, offer for sale, or purchase any American Samoa bottomfish MUS in a closed fishery, in violation of § 665.102.

(b) [Reserved]

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